



## SB 553

Prepared for the 78<sup>th</sup> Legislature, By the SB 553 Task Force  
In Accordance with Senate Bill 553, 77<sup>th</sup> Legislature, 2001

December 31, 2002

## **SB 553**

During the past several years, the state's leadership has carefully examined the administration of criminal justice in Texas. As a result of this review, several policy changes were enacted or initiated during the 77<sup>th</sup> Legislative Session to address due process issues. One particular area of policy concern identified as needing further review involved the process for raising and/or determining the competency or insanity of defendants. In response, the legislature enacted SB 553. This legislation called for the following:

- *The creation of a 16-member task force to review the methods and procedures used to evaluate a criminal defendant's competency to stand trial and use of the insanity defense.*
- *The composition of the task force was to reflect representatives of the following organizations:*
  - 1) *a member of the Senate appointed by the Lieutenant Governor;*
  - 2) *a member of the House of Representatives appointed by the Speaker of the House of Representatives;*
  - 3) *a district judge appointed by the presiding judge of the Court of Criminal Appeals;*
  - 4) *a representative of The University of Texas Medical Branch at Galveston and a representative of the Texas Tech University Health Sciences Center, each of whom has experience in forensic science, appointed by the executive head of the represented entity;*
  - 5) *a representative of a public or private school of law in this state with expertise in forensic or mental health law, appointed by the Lieutenant Governor; and*

6) *the executive head of each of the following agencies or associations or that person's designated representative:*

- A. the Texas Department of Criminal Justice;*
- B. the Texas Department of Mental Health and Mental Retardation;*
- C. the Texas Council on Offenders with Mental Impairments;*
- D. the Texas District and County Attorneys;*
- E. the Texas Criminal Defense Lawyers Association;*
- F. the Texas Association of Counties;*
- G. the Texas Medical Association;*
- H. the Texas Society of Psychiatric Physicians;*
- I. Capacity for Justice; and*
- J. the Texas Psychological Association*

- *The task force, in its review of the methods and procedures used to evaluate a criminal defendant's competency to stand trial and use of the insanity defense, shall:*

- 1) examine the process by which the examination of a defendant is initiated and administered, including the required and actual use of forms and other documentation;*
- 2) review the manner in which a person is appointed to conduct an examination;*
- 3) evaluate the adequacy of the qualifications and training of persons who may be appointed to conduct an examination;*
- 4) consider alternative means to (A) increase cost effectiveness in the examination process; and (B) maximize third-party payment of the costs of examinations; and*

- 5) assess the potential use and benefits of telepsychiatry. In addition the task force may take other action it considers necessary or advisable to conduct an effective review.*

The Task Force conducted its first meeting on January 23, 2002. Senator Robert Duncan was elected as Chair, and Representative Patricia Gray was elected as Vice-Chair. At this meeting, several professionals representing the juvenile and adult criminal justice system and legal experts were invited to provide an overview of their specific areas of interest relating to the determination of competency. Based upon the invited testimony and input from the task force members, the following problem areas were identified:

- 1. There exists no standardized process for identifying juveniles or adults with mental health or mental retardation within the justice system.**
- 2. The statutory provisions surrounding competency are not easily understood, consistently applied, or monitored for adherence or compliance.**
- 3. The actual evaluations submitted to the courts have been inconsistent in respect to content and compliance to statutorily-required information to be submitted to the courts.**
- 4. The evaluators' skill, experience and level of expertise varied from jurisdiction to jurisdiction though the minimum qualifications required in 46.02 appeared to be met in selecting experts. The qualifications, however, appeared to require strengthening to ensure competency of the experts.**

5. **In general, 46.02 of the Code of Criminal Procedure was difficult to interpret and left considerable room for independent interpretation by the courts, practitioners and local and state mental health entities.**

In order to accomplish a thorough review of the competency provisions, three (3) separate working groups were developed to review specific issues relating to 46.02. Those work groups and their respective assignments are outlined below:

The **Best Practices Work Group** was charged with addressing the following:

1. **What are the current practices for identifying defendants with mental illnesses or mental retardation prior to trial?** Are these regulatory, statutory or procedural practices adequate to ensure timely and appropriate identification?
2. **What, if any, process is in place to utilize third party payments (such as Medicaid) to offset the costs of conducting evaluations?** What type of barriers exist that may impede this Medicaid practice?
3. **Should specialized mental health courts (criminal) be developed to handle defendants with mental impairments?**
4. **How could telepsychiatry be best used in the evaluation process?**  
This should also be examined to see how this innovation could be used to reduce the transfer of defendants between the jail and hospital, and linking the courts in the process.
5. **Conditional release programs exist in several states for persons found incompetent and assigned to a state facility for the restoration of competency.** These programs ensure pre and post release compliance standards to treatment requirements for those persons being

discharged from state hospitals or state schools. What does Texas do, and can it be improved?

The **Evaluations Work Group** was responsible for reviewing the following issues:

1. **Are the current statutory requirements for evaluations sufficient?** If not, what revisions are needed to strengthen the standards?
2. **Are the current standards for the evaluator adequate?** Do other states have credential training, certification or experiential standards that Texas may want to consider?
3. **Is there some type of a pre or post quality assurance system in place that examines the competency and/or insanity evaluations that are currently conducted in Texas?** If not, what type of checks and balance system could be developed, if needed, to monitor compliance to statutory requirements for evaluations?
4. **If more uniformity is needed among evaluations and evaluators, what could be done to ensure compliance?**
5. **What, if anything, is needed to ensure that prior psychiatric or psychological information is provided to evaluators performing competency evaluations?**
6. **Should the persons conducting competency evaluations for defendants with mental retardation have more stringent requirements than currently exist?**

The **Statutory Work Group** was assigned a review of 46.02 in its entirety to identify areas that required clarification and/or enhancement with the end result being more user friendly.

During calendar year 2002, the work groups met a minimum of four (4) times to review and develop recommendations concerning their respective areas of focus. The results of each work group's efforts are summarized below:

### **BEST PRACTICES WORK GROUP RECOMMENDATIONS**

- **TCOMI, in cooperation with the Texas Commission on Jail Standards should conduct an analysis on the effectiveness of the mental health/mental retardation screening process currently used by county jails.** Findings and recommendations should be reported to the 79<sup>th</sup> Legislature.
- **Once an inmate/defendant has been identified as having a mental health or mental retardation diagnosis, a process is needed to communicate this diagnostic information to relevant entities within the criminal justice system.** Harris County has developed a rather simple, but effective notification process of flagging the inmate/defendant's MHMR file with an orange sheet of paper. This activity involves minimal costs, with potential savings implications for local and state government.
- **Telepsychiatry could prove to be an effective technology to aid rural communities that lack the personnel (jail staff) or professionals (psychiatrists) to perform the assessment tasks. In addition, telepsychiatry, or similar videoconferencing could be utilized to conduct judicial hearings between the state hospitals and courts.**

This would avoid unnecessary transport to and from the hospital, and minimize disruption of treatment for the defendant.

- **TCOMI, in cooperation with TDMHMR, should establish a conditional release program for defendants released from inpatient care and no longer have pending charges.** This conditioned release program would target individuals who have a history of frequent criminal justice contacts and non-compliance to treatment. The program should mirror the conditions of release requirements imposed by the courts or Parole Board for offenders released to community supervision or parole.
- **TDMHMR should implement a community-based competency restoration project.** Historically, the competency restoration function has been the sole responsibility of state facilities operated by the Department. Due to the limited number of facilities and geographic size of the state, transportation to and from facilities is a time consuming and expensive undertaking. Developing a community-based program may prove to be more cost effective and clinically beneficial to defendants by keeping them in a familiar environment. In addition, communication between the courts and local MH/MRAs should be improved in more interactions between local stakeholders.
- **To whatever extent possible, local jails should contract with the local MH/MRA to provide jail-based assessments and treatment.** Contracting with the public mental health system should significantly reduce duplication of assessments and strengthen the continuum of care between the jail and local MH/MRA. Furthermore, current rules governing continuity of care between state hospitals and local MH/MRAs could be revised to incorporate local jails in the continuum process.



## EVALUATION WORK GROUP RECOMMENDATIONS

The Evaluation Work Group's review of other states' requirements for evaluators and evaluations resulted in using Utah's statutes as a model to incorporate in proposed 46.02 revisions. Those revisions would include the following:

- **Evaluators must demonstrate specific training and expertise in forensic evaluations.** Training would include a minimum number of in-service hours of continuing education requirements in forensics.
- **A registry of qualified evaluators should be developed by the appropriate licensing boards.** Each licensing board would be responsible for maintaining and distributing the registry information in the most efficient and economic method.
- **The evaluator should be a licensed physician or psychologist. In addition, the evaluator should be in good standing with their respective licensing entities.**
- **The courts should retain the discretion to appoint evaluators to perform competency assessments.** Efforts, however, should be made to provide an updated listing of credentialed evaluators to the courts to assist them in the appointment process.
- **A system to monitor the quality of the competency evaluation should be developed.** This would entail a random selection of evaluations submitted to the courts and a review of the reports compliance to statutory guidelines.

## STATUTORY WORK GROUP RECOMMENDATIONS

This work group had perhaps the most significant challenges. The repeal of 46.02 seemed to be the overriding sentiment, not only by the Statutory Work Group, but the Task Force as a whole. The major recommendations for this work group were:

- 1. Streamline Section 46.02 of the Code of Criminal Procedure, to make the competency process more consistent and easier to understand.** By eliminating confusion or repetitive provisions, the resulting competency process should become more standardized in the 254 counties.
- 2. Elimination of jury trials for those defendants in cases when all parties agree that competency is an issue.** The current practice of “pick up” juries or utilizing a jury when all parties agree to the competency issue is not a sound practice.
- 3. Revise the current provisions that dictate to which facility the defendant is committed, based on pending charges and the nature of those charges.** Inconsistencies in the interpretation of the law regarding pending charges have resulted in incorrect placements in facilities and refusal by the local MHMR or state facility to commit due to pending charges. This provision’s original intent was to ensure the safety of mentally ill patients who are in the hospital due solely to their illness rather than criminal behavior. Though well-intentioned, the end results were counter-productive.

## **SB 553 CONCLUSION**

The SB 553 Task Force's review of the current system for determining competency and insanity revealed that a major overhaul of the governing statutes was warranted. Toward that end, a proposed legislative rewrite of 46.02 has been drafted and will be filed during the 78<sup>th</sup> Legislative Session.

One issue of critical concern that remains pending the Task Force's approval involves provisions for the involuntary medication of defendants who are discharged to the community or released back to the county jail.

In addition, a number of issues were identified that directly or indirectly impacted the competency process but required further study. Those issues include:

- 1. Continuity of Care** – There appears to be a need for creating a more formal mechanism for pre and post release procedures between the state facility, local jails and MH/MR Authorities. Though TDMHMR has agency rules on continuity of care for patients transitioning from state hospitals to community mental health services, there are not similar rules for the defendant returned to the local jail. Consistency in treatment, particularly as it relates to the type of medication prescribed by the state facility versus the local jail may impact the defendants' compliance to medication and consequently his/her continued competency. Furthermore, depending upon the charges, the defendant may be sentenced to community supervision or discharge his/her sentence without a release plan for continued mental health treatment. Research shows recidivism rates are higher for persons without access to appropriate community support services. In order to avoid the unnecessary cycle of arrests and incarcerations for "behavioral" versus criminal actions, a considerable level of work is needed to improve the overall continuity of care process.

## **2. Quality Assurance and Monitoring of Evaluators and Evaluations –**

In order to ensure that competency evaluations adhere to specified statutory requirements, there should be a mechanism in place to monitor the reports submitted to the courts. Similarly, a registry of qualified evaluators who need experiential, educational and training requirements is a strategy toward ensuring the competency of the evaluators. Both would allow for an improved system of oversight and quality assurance of the competency process, thus minimizing potential procedural or due process concerns.

## **3. Civil Outpatient Commitments –** Local law enforcement and jail staff have expressed considerable frustration over their perceived role as the new mental health providers for persons with mental illnesses. Without a more accountable system of mental health care, both in terms of resources and ability to hold persons with mental illness accountable for treatment compliance, the current revolving door system will continue. Further examination of mental health resources, statutory and administrative practices is warranted to determine the most effective strategies to address this critical issue.

During the past decade, the ever-increasing number of persons with mental illnesses in the criminal justice system has triggered a number of proactive legislative responses. The SB 553 Task Force and its resulting legislative proposal recognized that an improved system of identification and evaluation may provide some measure of front end diversion from further progression in the criminal justice system. The recommended revisions to 46.02 as well as other regulatory, procedural and statutory practices, provides a solid step in the right direction.